

Application Serial No.: 10/575,532
Office Action dated: October 23, 2008
Response to Office Action dated: April 17, 2009

REMARKS

In the Office Action dated October 23, 2008:

Claims 51, 52, 63, 70, 86-88, 90, and 91 were provisionally rejected for non-statutory obviousness-type double patenting in view of claims 34, 35, 37, and 44 in co-pending U.S. Patent Application Serial No. 11/483,275;

Claims 51, 52, 58-86, and 88-90 were rejected under 35 USC § 102(e) as anticipated by Baumann (U.S. Patent No. 7,003,373);

Claims 57 and 91 were rejected under 35 USC § 103(a) as obvious over Baumann.; and

Claims 53-57 were indicated as allowable if amended to independent form, incorporating claims 51 and 52.

Claims 51-91 are pending.

Applicants provisionally submit a Terminal Disclaimer of the terminal part of the term of any patent issuing from co-pending U.S. Patent Application Serial No. 11/483,275. In view of the Terminal Disclaimer, Applicants respectfully request that the provisional double-patenting rejection be withdrawn.

Applicants respectfully traverse the rejections based upon Baumann.

Baumann is Not Available as Prior Art

Applicants submit a Declaration of Prior Invention under 37 CFR § 1.131. As evidence in support of the Declaration, Applicants attach partly-redacted copies of a proposed or draft patent documents, transmitted by facsimile between Applicants and Applicants' German patent practitioners before September 26, 2003.

The draft patent documents are in German. However, as can be seen from a line-by-line comparison, the draft documents are essentially identical to the published application PCT/EP2003/011568, of which the present application is

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an English translation. In particular, the following portions of the draft documents are identical to the published PCT application:

- Title;
 - Abstract;
 - Claims; and
 - Drawings.
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- The Specification of the published application is also identical with the few excepts listed here:
 - The paragraph spanning pages 4-5 of the published application is not present in the German draft;
 - On page 6 of the published application, after the equations, the axis of the disclosed machine is described with a wording slightly revised from that found in the German draft;
 - The last full paragraph of page 6 in the German draft is omitted from the published application;
 - Paragraphs 0027 and 0028 of the U.S. English Language application are omitted from the German draft;
 - On page 17 of the published application, the label for Table 1 is placed after the table, instead of before the table as in the German draft;
 - Table 1 of the published application is followed by an explanation of the table, which does not appear in the German draft.

Accordingly, Applicants respectfully submit that the German documents submitted provide ample evidence in support of the Declaration of Prior Invention.

As evidenced by the Declaration of Prior Invention and by the German documents, the claimed invention was made by Applicants before September 26, 2003 (Baumann's filing date in the United States). Thus, Baumann is not available as prior art under 35 USC § 102(e) or § 103. Since Baumann is not

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available as prior art, the rejections of claims 51, 52 and 58-91 over Baumann are traversed and should be withdrawn.

All pending claims 51-91 are therefore allowable.

Conclusion

In view of the above arguments, Applicants respectfully request that Examiner withdraw the present rejections, and pass to issue claims 51-91.

Applicants hereby petition for a three (3) month extension of time to respond to the present Final Office Action. Applicants' Attorneys hereby authorize the Commissioner to charge the three (3) month extension fee of \$1,110.00 to the Deposit Account 13-0235.

Applicants believe no additional fees are due in connection with this Amendment and Response. If additional fees are deemed necessary, Applicants' Attorneys hereby authorize the Commissioner to deduct such fees from our Deposit Account 13-0235.

Respectfully submitted,

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